



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Claude R. Hall - Travel Expenses -
Vacation Trip - Erroneous Advice
File:
Date: B-223737
June 24, 1987

DIGEST

In response to a job announcement, an employee applied for and was accepted for a position in Guam. The job announcement and his travel orders authorized one round-trip vacation to Hawaii for the employee and his family at government expense. His claim for reimbursement for these vacation travel expenses is denied since (1) the government is not bound by employment offer, (2) the employee's rights are statutory and not contractual, and (3) there is no statutory authority for payment. The government is not bound by unauthorized acts of its agents, and the facts of this case do not contain equitable considerations that warrant our reporting the matter to Congress under the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

BACKGROUND

This decision is in response to a joint request under our labor-management procedures in 4 C.F.R. Part 22, from officials of the U.S. Department of Labor, Office of the Assistant Secretary for Administration and Management, and the National Council of Field Labor Lodges. The issue presented is whether Mr. Claude R. Hall, an employee of Labor, may be reimbursed for the travel and subsistence expenses he incurred when he and his family went on a vacation trip to Hawaii. The vacation was authorized by Labor at government expense. We conclude that Mr. Hall may not be reimbursed since there is no authority for payment for this trip. Nor do we believe his claim contains such equitable considerations that would warrant our reporting it to Congress under provisions of the Meritorious Claims Act, 31 U.S.C. § 3702(d) (1982).

Mr. Hall is a Wage-Hour Compliance Officer with the Employment Security Administration, Labor, currently stationed in Eugene, Oregon. Mr. Hall was originally stationed in Eugene, Oregon, when, in response to a job

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announcement dated June 25, 1980, he applied for and was accepted for a position in Guam. Both Mr. Hall's travel orders for his permanent change of station and the job announcement specifically authorized one roundtrip to Hawaii for the Compliance Officer and his family with expenses to be paid for by Labor. In October 1981, travel orders were issued authorizing Mr. Hall to travel from Guam to attend a 2-day training session in Hawaii, accompanied by his wife and two children. The period of travel was from December 19, 1981, to January 2, 1982.

Mr. Hall's subsequent claim for reimbursement for his trip to Hawaii was reduced by Labor on the basis that there was no authority for payment for the travel of his wife and children. Mr. Hall was allowed \$243.75 for per diem and related expenses and \$930 for airfare for the 2 days he was on official business; however, Labor has requested that he reimburse them the \$1,154.25 for airfare expended for his wife and children who had traveled at government expense on a Government Transportation Request form.

Mr. Hall has grieved his denial of reimbursement on the basis that he would not have taken the vacation if he had not been advised that he would be reimbursed, and he believes he should be reimbursed as a matter of equity. The step two grievance is being held in abeyance, and both parties have agreed to be bound by our decision.

OPINION

The relationship between the federal government and its employees is not a contractual relationship. Since federal employees are appointed and serve only in accordance with the applicable statutes and regulations, the ordinary principles of contract law do not apply. Elder and Owen, 56 Comp. Gen. 85, at 88 (1976). Thus, the government is not bound by the terms of the employment offer. Instead, Mr. Hall's rights stem from the statutory authority in chapter 57, title 5, of the United States Code, governing travel and relocation expenses for federal employees.

The only statutory authority that closely resembles the offer made to Mr. Hall of a free vacation trip to Hawaii is found in 5 U.S.C. § 5728 (1982), which provides reimbursement for an employee and his family of the expenses of round-trip travel from the employee's post of duty outside the continental United States to his place of actual residence at the time of appointment. However, in order to qualify for this so-called "home leave" provision, an employee must have completed 2 years of service outside the

continental United States and return to his actual place of residence to take leave before serving at least 2 more years of duty outside the continental United States. See Charles E. Potts, 65 Comp. Gen. 213, at 215 (1986). This provision would not apply to Mr. Hall since he spent only a brief period of time overseas before he went to Hawaii, and he did not return to his place of residence in Oregon before serving another 2 more years of service outside the United States.

There is no doubt in this case that Mr. Hall was given erroneous advice and was improperly issued travel orders. However, it is a well-settled rule of law that the government cannot be bound beyond the actual authority conferred upon its agents and employees by statute or by regulations. This is so even though the agent or employee may not have been completely aware of the limitation on his authority. See M. Reza Fassihi, 54 Comp. Gen. 747 (1975), and court cases cited. Also, the government is not estopped from repudiating unauthorized acts performed by one of its agents or employees and any payments made on the basis of such erroneous authorizations are recoverable. See Joseph Pradarits, 56 Comp. Gen. 131 (1976). Accordingly, Labor acted correctly when it refused to reimburse Mr. Hall since there is no authority to do so.

Mr. Hall also requests that we consider his claim on an equitable basis. This Office does not have equitable authority per se. However, we do have the authority to submit a meritorious claim to Congress under 31 U.S.C. § 3702(d) (1982), supra. Subsection 3702(d) of Title 31, the so-called Meritorious Claims Act, provides:

"The Comptroller General shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the Comptroller General believes Congress should consider for legal or equitable reasons. The report shall include recommendations of the Comptroller General."

Prior to our decision in John H. Teele, 65 Comp. Gen. 679 (1986), it had been our general policy not to report to Congress under the Meritorious Claims Act claims which are based on erroneous official advice furnished to government employees, even where the employee acted reasonably in reliance on the erroneous advice and incurred substantial costs. However, in Teele we changed our policy, and we will

now consider erroneous advice cases on a case-to-case basis and submit to Congress those which, in our judgment, meet the standards for relief under the Meritorious Claims Act. We are not satisfied, however, that Mr. Hall's claim meets the Act's standards based on substantial equitable considerations.

There is no doubt in this case that Mr. Hall was given erroneous advice, but if we were to act favorably we would, in effect, be recommending to Congress that appropriated funds be expended to reimburse an employee for a vacation trip to Hawaii. Mr. Hall performed temporary duty in Hawaii and he has been reimbursed for this portion of his travel expenses. Mr. Hall then is in no worse a position than any other government employee who combines business with pleasure and is accompanied on official business by his spouse or other family members, with the government reimbursing the employee for a portion of his holiday expenses.

Accordingly, we decline to report Mr. Hall's claim to Congress under provisions of the Meritorious Claims Act. Mr. Hall's debt should be collected by Labor in the usual manner.

for 
Comptroller General
of the United States